

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

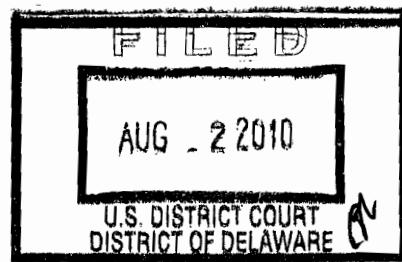
KEVIN C. BRATHWAITE
PLAINTIFF

v.

CIVIL ACTION #

10- 646

WARDEN PERRY PHELPS
Deputy Warden DAVID Pierce
Deputy Warden Chris Klien
MAJOR JAMES SCARBOROUGH
CAPTAIN Marcello Rispoli
S/LT. Karen Hawkins
LT. Furman
RONALD Hasterman



COMPLAINT

FIRST CAUSE OF ACTION

1. KEVIN C. BRATHWAITE, is an inmate at the James T. Vaughn Correctional center.
2. The defendants are employees of the Delaware Department of Corrections and are assign to the J-T-V-C-C.

(A)

3. These defendants are being sued in their individual and official capacities as they were not performing their duties under the color of state law
4. The defendants are as follows:

Warden Perry Phelps
J.T.V.C.C.
1181 Paddock Rd
Smyrna De.
19977

Deputy Warden DAVID Pierce
J.T.V.C.C.
1181 Paddock Rd.
Smyrna De.
19977

Deputy Warden Christopher Kilien
J.T.V.C.C.
1181 Paddock Rd
Smyrna De.
19977

MAJOR JAMES SCARBOROUGH

J.T.V.C.C.

1181 Paddock Rd.

Smyrna De

19977

CAPT. MARCELLO RISPOLI

J.T.V.C.C.

1181 Paddock Rd

Smyrna De

19977

S/LT. KAREN HAWKINS

J.T.V.C.C.

1181 Paddock Rd

Smyrna De.

19977

L.T. FURMAN

J.T.V.C.C.

1181 Paddock Rd

Smyrna De

19977

RONALD HOSTERMAN

J.T.V.C.C.

1181 Paddock Rd.

Smyrna De.

19977

STATEMENT OF CLAIM

For almost Seven(7) years from 2004 thru 2010, KEVIN C. BRATHWAITE has been housed in the security housing unit on the "remain in S.H.U" list. And throughout this time he has never received a proper legal classification hearing, which is required for due process. He was ordered to complete the S.H.U programs and go through a level and point system which determines how an inmate is housed and also determines the amount of privileges an inmate is allowed to have. The Warden and his designees are required by law to review each inmate on a monthly basis to determine if the inmate has fulfilled his obligations, under the points and level system. Even though Kevin C. Brathwaite has completed every S.H.U. program four (4) times. And reached the required points to be housed in general

Population, Warden Perry Phelps, ~~and~~
deputy warden Pierce, and
Major Scarborough, refuse to allow
the counselors to give him a
proper classification hearing.
A legal annual classification hearing
and a legal monthly review is
required by law. And to be placed
on the "remain in S.H.U." list or
administrative segregation without
being classified annually and
reviewed monthly, is violation of
Kevin C. Brathwaite's right to due
process, double jeopardy and his
right to be free from cruel
and unusual punishment.

ON OR ABOUT April, 11th, 2008
while being housed at the J.T.V.C.C.
in the Security housing unit,
S.H.U. KEVIN C. BRATHWAITE, was
told by the building SGT. that
she had received a phone call
and that an order was given
by Deputy Warden Pierce and
or Major Scarborough that

KEVIN C. BRATHWAITE, WAS TO BE FIRED FROM HIS JOB. AND THAT THE THE TERMINATION WAS TO TAKE EFFECT IMMEDIATELY. HE HAD HELD HIS JOB FOR ALMOST TWO (2) YEARS AND WHEN HE ASKED WHY HE WAS BEING FIRED. THE REASON HE WAS GIVEN, WAS JUST THAT DEPUTY WARDEN PIERCE AND MAJOR SCARBOROUGH SAID THAT HE WAS NOT ALLOWED TO WORK ANYMORE. AND THAT THEY HAD GIVEN THE ORDER TO FIRE HIM. THE LEGAL EMPLOYMENT PROTOCOL CLEARLY REQUIRES THAT ANYTIME AN INMATE IS TERMINATED AT ANYTIME, DUE PROCESS IS REQUIRED. UNLESS THE INMATE HAS CAUSED AN EMERGENCY SITUATION WHICH REQUIRES HIM TO BE SECURED. AFTER TEN (10) MONTHS OF SUBMITTING GRIEVANCES AND WRITING LETTERS TO WARDEN PHELPS, DEPUTY WARDEN PIERCE, MAJOR SCARBOROUGH, RONALD HOSTERMANN AND KENNETH MILBORNE, TO ATTEMPT TO RECTIFY THIS PROBLEM, ALL ATTEMPTS WERE IGNORED.

AND ON MAY, 10th, 2009 Kevin C.-Brathwaite WAS hired for the same job AND APPROXIMATELY two (2) days later he WAS told by the bldg SGT. THAT S/LT. HAWKINS called the building AND SAID that she did NOT WANT Kevin C. Brathwaite to have A job. Then ONCE AGAIN ON MARCH, 19th, 2010 Kevin C. Brathwaite WAS hired for the same job. AND AGAIN two (2) days later he WAS told that S/LT. HAWKINS called the bldg AND SAID that she does NOT WANT him to have A job. The ACTIONS OF S/LT. HAWKINS violated the inmate employment protocol which requires that due process be followed ANYTIME an inmate is terminated. AND THESE CONTINUOUS ACTIONS clearly shows deliberate indifference.

ON october, 17th, 2008, Kevin C. Brathwaite while being housed in the security housing unit (S.H.U) Bldg - 17 - Cell - B-L-8, LT. NEAL AND LT. Dejesus came to his cell and told him that the captain wanted to talk to him up front. After being handcuffed with two (2) sets of handcuffs and shackled, Kevin C. Brathwaite was taken directly to the "hole" in Bldg - 18 and placed into Cell - C-L-11. He was then told that he was being placed in the hole because he still owed fifty seven days (57) back up hole time from 2 incidents that had occurred back in 2004. And that the order was given by Captain Rispoli. And he was told that during his hole time he would not be receiving ANY visits or any other privileges including recreation. After spending twelve ~~2~~ (2) in the hole, Kevin C. Brathwaite was able to prove that he had

Already completed all of his hole time over three (3) years prior. at which time he was taken out of the hole. Captain Rispoli violated his right to be free from double jeopardy and to be ~~free~~ from cruel and unusual punishment.

Kevin C. Brathwaite has been suffering from chronic shoulder injuries for years. Which causes him severe pain anytime his right arm is pulled back too far. So since 2000 there has always been a memo issued by the medical department that stated, that if at anytime Kevin C. Brathwaite needed to be handcuffed, security would need to use double cuffs. And after eight (8) years of this memo being renewed annually, Deputy Warden Klein, took it upon himself to ignore the Medical Memo and cause Kevin C. Brathwaite pain and suffering on a daily basis.

AND FROM NOVEMBER, 2008 THRU
MARCH, 2009, THE UNJUSTIFIED
ACTS OF DEPUTY WARDEN KLEIN
AND MAJOR SCARBOROUGH, CAUSED
THIS PLAINTIFF TO BE DENIED
VISITS, RECREATION, SHOWERS, MEDICAL
APPOINTMENTS PHONE CALLS, AND LEGAL
CALLS. THIS ABUSE IS A CLEAR
VIOLATION OF HIS RIGHT TO BE FREE
FROM CRUEL AND UNUSUAL PUNISHMENT,
DELIBERATE INDIFERRENCE AND
PAIN AND SUFFERING.

AFFIDAVIT

Since the year 2004 I have been housed in the security housing unit (S.H.U) on the "remain in S.H.U" list. And every October when I am due for a classification hearing. One of the counselors comes to my cell door and tells me that I am still on the "remain in S.H.U" list. And I am never given a classification hearing. And I have always been told by the counselors, that the only way that I can be removed from the "remain in S.H.U." list is to be active in the S.H.U. programs and to get my points down to the required points under the "point system". And that anyone that has Seventeen (17) points or more must remain in the S.H.U. Thirteen (13) points thru Sixteen (16) points are for inmates that are housed in the maximum housing units (MHU) and that inmates with twelve points (12) or lower

Are to be housed in general population. I have seven (7) points and my points can never get any lower. I have completed ever S.H.U. program four times in the past 6½ years and there is nothing more that I can do. I've written numerous letters to Warden Phelps, Deputy Warden Pierce and Major Scarborough, in attempts to get answers as to why I have to stay in the S.H.U. And all of my letters have been ignored. Over the years I have filed grievances regarding this matter and every grievance is deemed to be non-grievable. As recently as June, 2010 I have even written a letter to the governors office to let them know what is going on here. And I received a response from the governors office to let me know that my letter had been received and that it has been forwarded to the Dept. of Correction for their response.

But I know that no response will be forthcoming. Throughout my time on the "remain in S.H.U." list I have not receive a monthly review as is required. And I have not had ANY type of due process what so ever.

IN November, 2008 I was seen by the nurse practitioner, Lisa Sugar to have my medical memo renewed for my chronically injured shoulder as I've done since, 2000. And Nurse Sugar renewed my memo, which requires that double-cuffs be used anytime handcuffs are "necessary". And for some reason unknown to me, Deputy Warden Klein denied my medical memo. AND S/LT. Hawkins issued a memo that stated that I am not to be double cuffed anymore. I hadn't done anything wrong. NOR WAS I ACCUSED OF ANY type of disciplinary action to deem this abuse necessary. And in the S.H.U. inmates

have to be handcuffed anytime they come out of their cells. And everytime I tried to let the officers use one (1) set of cuffs I could feel and hear the bones in my shoulder pop up and grind together. The swelling was so bad that a few of the officers would let me take a shower by bringing me from my cell to the shower by handcuffing me in the front instead of behind my back. But they were reprimanded by their superiors for not following orders. And one one occasion after being put in the shower with the handcuffs in front because my shoulder was swollen. LT. Furman told me that I had to go back to my cell with only one handcuff and I would be cuffed behind my back. And if I refused, he would have me physically removed from the shower. So while LT. Furman stood there in front of the shower and watched, he ordered

the two officers to bend my arms back and force the one set of handcuffs on me, no matter what. At which time I was not going to risk being written up for a frivolous disciplinary report. So I had to painfully comply with the order to turn around to be cuffed with one set of cuffs. I could see from the expression on the officers faces that they did not agree with what they were being forced to do. And I know that if I would not have complied, then LT. Furman would have followed through with his threat to call the Q.R.T. and forcefully handcuff me with the one set of cuffs. Then I would have ended up in the hole with a disciplinary report. After I was forcefully squeezed into the one (1) set of cuffs and taken out of the shower. I was put back in my cell. And a few minutes later my shoulder swelled up to about the size of a volleyball.

AND THE TIER OFFICER IMMEDIATELY CALLED THE NURSE TO THE BUILDING. WHEN NURSE BETTY ARRIVED, SHE WAS TOLD THAT SHE COULD NOT COME ON THE TIER. LT. FURMAN TOLD HER THAT HE WOULD BRING ME OUT TO THE NURSES STATION SO SHE COULD EXAMINE MY SHOULDER. THEN LT. FURMAN CAME TO GET ME TO BRING ME OUT TO SEE THE NURSE. BUT HE TOLD ME THAT I WOULD NOT BE ALLOWED TO SEE THE NURSE UNLESS I AGREED TO COME OUT OF MY CELL WITH ONE (1) SET OF CUFFS ON. AT WHICH TIME I WAS IN ENTIRELY TOO MUCH PAIN. SO LT. FURMAN WENT AND TOLD ~~THE~~ NURSE BETTY THAT I HAD REFUSED TREATMENT. WHICH WAS A LIE. AND NURSE BETTY LEFT THE BUILDING WITHOUT LOOKING AT MY SHOULDER. AFTER THAT INCIDENT I DID NOT COME OUT OF MY CELL FOR ANY REASON AT ALL BECAUSE IT ~~WAS~~ WAS JUST TOO PAINFUL. I EVEN HAD TO TAKE SHOWERS IN MY

cell by using bowls of water to pour over my head so that the water could run down my whole body. It took so many bowls of water to clean myself properly, that the water would run out of my cell under the door. Which resulted in me being written up for getting the floor wet. But I had to maintain my personal hygiene by ANY means NECESSARY.

ON February, 5th, 2009 after three (3) months of staying in my cell twenty four (24) hours per day.

DR. McDonald came to the building to see me. AND when I did not come out to the medical office to see him with one (1) set of cuffs on, he called the Warden's office to tell him that he needed to see me. AND the Warden ordered the building officer to bring me out to see the doctor with two (2) sets of CUFFS. DR. McDonald examined my shoulder and measured the distance that my shoulder could be pulled

back without pain. And he determined that one set of handcuffs would be too painful. DR. McDONALD also ordered X-RAYS. And the X-RAYS clearly showed that there was damage done to my shoulder. My shoulder is in such a state of disrepair that the cortizone injection treatment I received in 2008 did not work. From November, 2008 thru March, 2009 I wrote letters to Warden Phelps, Deputy Warden Pierce, Deputy Warden Klein, Major Scarborough, S/LT. Hawkins, LT. Harvey, LT. Forman, LT. Seacord, and CPL. Dutton. And all of my letters were ignored. As was all of my grievances. I later found out that inmate, Thomas Caprano also had a medical memo for double cuffs. And nobody interfered with his memo. And when I brought it to the administrators attention that my shoulder disability was much worse than Caprano's. After nearly four(4) months of staying in my cell for twenty four (24) hours per day to avoid the pain caused by these defendants. A solution was finally ordered to remedy the problem.

ON OR ABOUT APRIL, 10th, 2008 WHILE BEING HOUSED IN THE SECURITY HOUSING UNIT (S.H.U) I WAS TOLD BY THE BLDG - SGT, THAT SHE HAS RECEIVED A PHONE CALL FROM HER SUPERIORS AND WAS TOLD THAT I WAS TO BE FIRED FROM THE TIERMAN JOB THAT I HAD HELD FOR ALMOST TWO (2) YEARS. AND THAT THE ORDER FOR TERMINATION HAD BEEN GIVEN BY DEPUTY WARDEN PIERCE AND MAJOR SCARBOROUGH. WHEN I ASKED THE BLDG SGT: WHAT I DID TO BE FIRED, SHE STATED "I DON'T KNOW". THE PROTOCOL FOR TERMINATION FROM A JOB REQUIRES THAT AN INMATE BE GIVEN DUE PROCESS. AND DUE PROCESS WAS NOT FOLLOWED. AFTER MANY ATTEMPTS TO UTILIZE THE ADMINISTRATIVE REMEDY'S AT MY DISPOSAL. MOST OF MY GRIEVANCES AND LETTERS WERE IGNORED, AND DEEMED NON GRIEVABLE.

ONCE AGAIN I WAS GIVEN A JOB ON OR ABOUT MAY, 10th, 2009 AND TWO (2) DAYS LATER THE BLDG SUPERVISOR CAME AND TOLD ME THAT S/LT-HAWKINS CALLED THE BLDG AND

said that I was to be fired immediately. No reason was ever given for the termination.

And again I was given the job on or about March, 19th, 2010. And once again two (2) days later the bldg SGT- came and told me that S/LT. HAWKINS told her that I was to be fired immediately. No reason was ever given and no due process was ever followed.

ON October, 17th, 2008 LT. Neal and LT- DeJesus came to my cell while I was in the security housing unit S.H.U. bldg - 17 - B-L-8. They told me that someone needed to speak to me up in the front. After I was handcuffed with two (2) sets of handcuffs and shackled, I was escorted directly to the hole, in bldg - 18 - C-Tier. I was told that I owed ~~50~~ FIFTY Seven (57) day backed up hole time for incidents that had occurred in 2004. They said that this order

to put me in the hole for 57 days had been ordered by Captain Rispoli. At which time I showed all of necessary paperwork to every Area Lieutenant on every shift. And every Lieutenant told me that they already knew that my paperwork was correct. And that I had already done all of my hole time three (3) years prior because they had already checked the computer. And all of the Lieutenants went on to say that they had already spoken to Capt. Rispoli about the situation. And Capt. Rispoli said that I do the hole time again. After spend eleven (11) days in the hole I finally went through the bldg officer and she took my paperwork directly to the security chief. At which time I was let out of the hole after eleven (11) days with no recreation, visits, mail or any other activities.

I AFFIRM THIS STATEMENT TO BE
TRUE UNDER THE PENALTIES OF PERJURY



KEVIN C. BRATHWAITE

315294

1181 Paddock Rd.

Smyrna De.

19977

RELIEF SOUGHT

THIS PLAINTIFF REQUEST THE FOLLOWING
RELIEF:

1. These defendants be ordered to pay one thousand dollars (\$1,000⁰⁰) per day that this plaintiff was illegally held in Administrative Segregation without the proper due process and monthly status reviews
2. These defendants be ordered to pay five hundred dollars (\$500⁰⁰) per day for each day that this plaintiff was illegally terminated without due process
3. These defendants be ordered to pay one thousand dollars (\$1,000⁰⁰) per day ~~for~~ for each day that this plaintiff illegally spent in the hole, while being subjected to double jeopardy
4. These defendants be ordered to pay one thousand dollars (\$1,000⁰⁰) per day for each day that this plaintiff was denied recreation, mail, phone calls and other privileges while being subjected to double jeopardy.

5. These defendants be ordered to ~~pay Five HUNDRED THOUSAND Dollars~~ (\$500,000) for deliberately causing this plaintiff unreasonable pain and suffering and undue hardship by deliberately and maliciously ignoring his disability.
6. These defendants be ordered to ~~pay~~ one million Dollars (\$1,000,000) in punitive damages.
7. These defendants be ordered to pay any other relief that this court deems fit and proper.



IN: KEVIN C. BROTHWAITE

SB# 315294 UNIT 18
JAMES T VAUGHN CORRECTIONAL CENTER
1181 PADDICK ROAD
SMYRNA, DELAWARE 19877

PETER DALLEO, SARK
PETER DALLEO, SARK
U. S. DISTRICT COURT
OFFICE OF THE CLERK
84 N. KING ST
WILMINGTON, DE
19801